From the desk of . . .

PAUL TANDLER

10/16/86

Hank -

Joe Mayer of the FAB Council called to ask our opinion on the effect of losing removal credits.

They may join in the CMA action.

You know my response.

FROM THE DESK OF

Jocelyn White

Hank:

I thought you might be interested in the attached article.

Jocelyn

10/14/86
TO ~~Paul~~ ~~Sandy~~ N

FAB Council corr

that a conference to settle differences between the House and Senate versions of the bill may proceed.

The Senate side is "willing to compromise," Robert F. Hurley, a staff member with the Senate Environment and Public Works Subcommittee on Environmental Pollution, told BNA Sept. 30.

The conflict centers on provisions in the Senate bill (S 1128) that would allocate a greater proportion of the funds to the West and Southwest, a Senate staff member told BNA Sept. 30. The provisions were sponsored by Sen. Lloyd Bentsen (D-Texas).

Sens. David Durenberger (R-Minn) and Daniel P. Moynihan (D-NY), both committee members, "prefer the House formula," which would leave the allocation system as it is, but failed to sway the committee or the Senate on the issue during consideration of the bill, the staff member said.

The current plan is a reflection of the Environmental Protection Agency's Needs Survey, which indicates greater need for treatment plant funds in the Northeast and Midwest, the staff member said.

The Needs Survey is based on current demands for wastewater treatment plant construction and renovation, she said. The allocation formula in the Senate bill would reflect needs for the year 2000, the staff member said.

"There is an expectation that the formula will be changed," Kevin McCarty, legislative director for the Association of Metropolitan Sewerage Agencies, told BNA Oct. 1.

In other developments, the House Sept. 25 passed an appropriations bill (HR 5313) that would provide $2.4 billion in funding for the construction grants program. The Senate Appropriations Committee Sept. 25 approved a version of a continuing appropriations bill (HJRes 738) that also would provide $2.4 billion for the program. (See related item in this issue.)

The Senate version would carry over $600 million in unspent funds from fiscal 1986, while the House version is silent on the issue.

Hazardous Waste

EPA WITHDRAWS PROPOSAL UNDER RCRA TO NARROW EXCLUSION FOR MINING WASTE

A proposal that would narrow the scope of the mining waste exclusion under the Resource Conservation and Recovery Act is being withdrawn by the Environmental Protection Agency, the agency announced Oct. 1.

In addition, six smelting wastes that the proposal would have designated as hazardous under RCRA will continue to be excluded from regulation as hazardous, under the agency's Oct. 1 announcement.

EPA said it arrived at the decision after determining that further study is needed to develop practical criteria for distinguishing between mining wastes that should or should not be excluded from regulation as hazardous under RCRA.

The EPA decision was required by Sept. 30 under a court order in a suit filed against the agency in a federal district court by the citizens of a Maryland town and other citizen groups (*Concerned Citizens of Adamstown v. EPA*, DDC, No. 84-3041).

The groups charged that EPA failed to complete studies of mining waste and report to Congress as required under RCRA Section 8002. The court ordered, in a decision issued Aug. 21, 1985, that the agency complete the required studies and take final action on its proposal to reinterpret the RCRA mining waste exclusion by specific deadlines.

The EPA reinterpretation proposal, issued Oct. 3, 1985, would have narrowed the scope of the RCRA mining waste exclusion to include only large volume, low hazard wastes from ore processing (Current Developments, Oct. 4, 1985, p. 966).

However, under the agency's Oct. 1 announcement, the exclusion will remain in its current form, which EPA interprets as encompassing "solid waste from the exploration, mining, milling, smelting, and refining of ores and minerals."

High Volume, Low Hazard Definitions

EPA said the proposed mining waste reinterpretation did not define "high volume" or "low hazard," nor did it discuss any of the issues associated with these definitions. Therefore, the public could not discern whether a given waste might qualify for continued exclusion from RCRA regulation as a high volume, low hazard waste, the agency explained.

The most significant problem to be worked out regarding the high volume, low hazard definition is a determination of how various wastes can be grouped rationally, according to EPA. For example, wastes could be grouped by type of industry, type of waste, or both, the agency said.

This information is important for setting cutoff levels below which waste generation would not be considered high volume, EPA said. The distinction between waste generated by each facility and industry-wide also plays a role in defining high volume, according to the agency.

EPA added that it must address the question of solid waste versus hazardous waste volumes in waste streams, a key element in defining the hazard a particular waste poses.

Moreover, the agency said it must establish baseline data adequate to enable comparison of volumes of waste generated annually given fluctuating production levels in the mining industry and other variables.

Study of Wastes, Issues Continuing

EPA said it is continuing to grapple with the problem of formulating ground rules that define wastes covered by the mining waste exclusion, adding that it is not stating that the high volume, low hazard principle is inherently unsound.

"In a more quantified form, this principle could become the basis" of mining waste exclusion ground rules under RCRA, the agency maintained.

EPA said it intends to include evaluation of the six wastes it proposed to relist as hazardous under RCRA in the first of several additional studies that the agency is planning under Section 8002 of the statute.

For further information, contact the RCRA/Superfund Hotline, toll free, at (800) 424-9346 or, in Washington, D.C. at (202) 382-3000. For technical information, contact Dan Derkics, telephone (202) 382-2791.

Litigation

EPA CONSIDERING SUPREME COURT APPEAL OF DECISION INVALIDATING REMOVAL CREDITS

Attorneys for the Environmental Protection Agency are meeting with Justice Department officials to decide whether to appeal an appeals court decision that invalidated EPA

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regulations on removal credits to industries discharging into municipal sewage treatment plants.

The U.S. Court of Appeals for the Third Circuit struck down the 1984 removal credit regulations April 30, finding fault with several aspects of the rules under the Clean Water Act (*NRDC v. EPA*, 24 ERC 1313; Current Developments, May 8, p. 27).

The agency had been giving credits to industries that discharge wastewater into municipal treatment plants based on the level of pollutants removed by the treatment plant. This allowed the industries to discharge wastewater into treatment plants with higher levels of some contaminants than industries that discharge directly into water bodies.

The deadline for filing a petition seeking U.S. Supreme Court review was Oct. 9, but the court granted a request by Justice to extend the filing time until Dec. 8, according to a letter dated Sept. 26 from the Court clerk's office to Solicitor General Charles Fried.

Blake Letter Argues against Petition

Government discussions continue although EPA General Counsel Francis S. Blake recommended in an Aug. 21 letter to F. Henry Habicht, assistant attorney general for land and natural resources, that Justice not file a petition for the High Court to hear the case. Blake noted that EPA's industrial wastewater pretreatment program can function without removal credits, and that the Chemical Manufacturers Association already has filed its own Supreme Court petition (*Chemical Manufacturers Assn. v. NRDC*, No. 86-239; Sept. 12, p. 714).

Blake also noted that, by the time the Supreme Court might rule on the case, "EPA would have already made considerable progress toward promulgating the sludge regulations required by the Third Circuit's decision as a precondition to removal credits."

Air Pollution

HOUSE LEADERS URGED BY FELLOW MEMBERS TO ASSURE CONSIDERATION OF ACID RAIN BILL

Rep. Gerry Sikorski (D-Minn) and 83 other members of Congress have urged the speaker of the House and the House minority leader to assure floor consideration of acid rain legislation before Congress recesses in early October.

In a letter transmitted Sept. 26 to Speaker of the House Thomas (Tip) O'Neill (D-Mass) and House Minority Leader Robert Michel (R-Ill), the 84 congressmen said there is broad support for acid rain legislation in the House, citing that 186 representatives co-sponsored an acid rain control measure (HR 4567) introduced by Rep. Henry Waxman (D-Calif).

Waxman's bill, approved May 20 by the House Energy and Commerce Subcommittee on Health and the Environment, would require a 10-million-ton reduction in sulfur dioxide emissions and a 4 million-ton-reduction in nitrogen oxide emissions by 1997 (Current Developments, May 23, p. 86).

According to the Sept. 26 letter, although HR 4567 and other acid rain control bills introduced into the House this year differ in their pollution control strategy, each of the measures "would make significant reductions in acid rain."

The letter said, "Clearly, a significant number of representatives believe that acid rain control legislation should be passed by the House of Representatives in 1986.

"Each day that the House delays controls on sulfur and nitrogen oxides emissions is another day that acid rain damages our environmental and economic resources."

Air Pollution

INDUSTRY SAYS STAFFORD ACID RAIN BILL COULD RAISE ELECTRICITY RATES 20 PERCENT

An acid rain control measure (S 2203) that would require large reductions in both sulfur and nitrogen oxide emissions could raise electricity rates as much as 20 percent in some states, according to a report released Sept. 25 at a Senate panel hearing by the Edison Electric Institute.

T. James Glauthier, vice president of Temple, Barker, & Sloane Inc., the consulting firm that prepared the report, told the Senate Environment and Public Works Committee that S 2203 would require utility customers to pay between $10.8 billion and $15.4 billion annually over 20 years.

The bill, introduced in March by Committee Chairman Robert T. Stafford (R-Vt), would require sulfur dioxide emission reductions of 12.3 million tons over 10 years along with cuts in emissions of nitrogen oxides, hydrocarbons, and carbon monoxide (Current Developments, March 21, p. 2084).

Glauthier commented that S 2203 would cost two to three times the $5 billion annual cost estimated for a similar but less stringent House acid rain control measure (HR 4567). HR 4567 was offered by Rep. Henry Waxman (D-Calif) and 150 co-sponsors and currently is being considered by the House Energy and Commerce Committee (Aug. 22, p. 600).

Glauthier added that Stafford's measure would require 900 coal-fired electricity generating units in the United States to invest up to $71 billion in scrubbers, innovative emission control technologies, or nitrogen oxide controls.

Stafford Counters Industry Arguments

The committee chairman countered, however, that, although the utility industry has been claiming for years that acid rain control legislation will cost too much and is unnecessary, the evidence is clear that more stringent emission controls should be imposed.

He argued that Clean Air Act standards for ozone, sulfur dioxide, and nitrogen oxides are too weak to protect human health and the environment adequately. Stafford said he intends to get either S 2203 or similar acid rain control legislation enacted next year.

Sens. John H. Chafee (R-RI) and George J. Mitchell (D-Maine), both panel members, also promised to make passage of acid rain control legislation a "number one priority" next year. The two panel members agreed that the consequences of delaying acid rain controls are more serious than the costs of imposing the controls.

Sen. Max S. Baucus (D-Mont) added that it is unlikely that any acid rain control legislation will pass this year, primarily because the measures that have been offered are "in the death grip of regional protectionism."

Proxmire Praises His Control Measure

Sen. William Proxmire (D-Wisc) testified at the hearing that another acid rain control bill (S 2813) which he offered earlier this month has the same goal as Stafford's bill but employs a fairer approach to limiting emissions and raising funds to pay for the controls (Sept. 19, p. 733).

While both S 2203 and S 2813 embody a "polluter-pays" principle, Proxmire said his bill would require lower payments from states that already have spent considerable

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